

D. S. asks the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Ms. S.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On April 7, 2003, Ms. S. was injured in a work-related accident. On September 3, 2003, she filed an application for hearing with the Commission to compel San Juan School District ("San Juan" hereafter) to pay medical expenses and temporary disability compensation related to her injuries. Judge Marlowe held an evidentiary hearing on Ms. S.' claim on May 4, 2004. On November 11, 2004, Judge Marlowe ruled that Ms. S. was entitled to payment of temporary total disability compensation from April 24 until July 7, 2003, as well as other benefits not now in dispute.

Ms. S. then filed a timely motion for Commission review of Judge Marlowe's decision. Specifically, Ms. S. contends she is entitled to temporary total disability compensation until December 15, 2003, rather than July 7, 2003, as determined by Judge Marlowe.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of fact. As relevant to the specific issue presented by Ms. S.' motion for review, the Commission concurs with Judge Marlowe's finding that the only medical opinion as to the date Ms. S. reached medical stability comes from Dr. Moress, who concluded that she had reached stability on July 8, 2003.

In making this finding, the Commission notes Dr. Wilmer's reports during August 2003 that Ms. S. remained under treatment and had been taken off work. However, Dr. Wilmer does not address the central question of whether Ms. S. had achieved medical stability, nor is Dr. Wilmer's continuing treatment of Ms. S. necessarily inconsistent with a finding of medical stability. Under these circumstances, the Commission finds that Dr. Moress's direct opinion on the date of medical stability to be persuasive.

DISCUSSION AND CONCLUSION OF LAW

Although San Juan initially argued that Ms. S.' accident and injuries of April 7, 2003, were not covered by the Utah Workers' Compensation Act, San Juan has accepted Judge Marlowe's determination that the accident and injuries are compensable. The only dispute before the Commission is the duration of Ms. S.' temporary total disability compensation.

Section 34A-2-410 provides various categories of compensation for work-related disability. With respect to an injured worker's right to temporary total disability compensation, the Utah Supreme Court observed in *Booms v. Rapp Constr. Co.*, 720 P. 2d 1363, that:

[t]emporary total disability benefits are typically awarded after a worker suffers a job-related disability that prevents him or her from returning to work. The purpose of those benefits is to "provide income for an employee during the time of recuperation from his injury and until his condition has stabilized." (citation omitted). . . . Once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits.

Because the evidence establishes that Ms. S. reached medical stability on July 8, 2003, her eligibility for temporary disability compensation ends on that date.

As a final matter, the Commission notes that San Juan's response to Ms. S.' motion for review includes a separate substantive argument that Ms. S.' temporary disability compensation should not commence until May 20, 2003, instead of on April 24, 2003, as ordered by Judge Marlowe. If San Juan intended to pursue this new and independent issue, it should have been raised in a timely motion for review, rather than as part of a response to Ms. S.' motion for review. The Commission therefore declines to consider this issue.

ORDER

The Commission affirms Judge Marlowe's decision and denies Ms. S.' motion for review. It is so ordered.

Dated this 21st day of July, 2005.

R. Lee Ellertson, Commissioner